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Supreme Court, U.S.

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1970

No. 29

U.S. Bulk Carriers, Inc.,

Petitioner

v.

Dominic B. Arguelles,

Respondent

**ON WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE
FOURTH CIRCUIT**

BRIEF FOR THE RESPONDENT

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SUPREME COURT OF THE UNITED STATES

October Term, 1910

NO. 10

U.S. DIST. CT. DIST. OF N.Y.

vs.

INDIAN NATION

et al.

Plaintiffs

vs.

INDIAN NATION

et al.

Defendants

U.S. DIST. CT. DIST. OF N.Y.

vs.

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et al.

Plaintiffs

vs.

INDIAN NATION

et al.

Defendants

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3. The third of the above mentioned items is a copy of the report of the committee on the subject of the proposed amendment to the constitution of the State of New York, passed at the session of the Legislature in 1896.

4. The fourth of the above mentioned items is a copy of the report of the committee on the subject of the proposed amendment to the constitution of the State of New York, passed at the session of the Legislature in 1897.

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**ON WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE
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BRIEF FOR THE RESPONDENT

Opinion Below

The opinion of the Fourth Circuit Court of Appeals (57a-72a)¹ is reported in 408 F.2d 1965.

Jurisdiction

The jurisdiction of this Court rests on

1 - Unless otherwise indicated, numerals in parenthesis refer to page numbers of Petitioner's Appendix.

IN THE

COURT OF THE UNITED STATES

OF THE DISTRICT OF

MASSACHUSETTS

IN SENATE

OF THE STATE OF

MASSACHUSETTS

IN SENATE

OF THE STATE OF

MASSACHUSETTS

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MASSACHUSETTS
IN SENATE

28 U.S.C.A., Section 1254 (1) and 28 U.S.C.A.,
Section 1333.

Question Presented

I. Did The Lower Court Err By Its
Judgment Reversing The District Court?

A. Does the grievance machinery of
the collective bargaining agreement in this case
supersede the federal statutes, 46 U.S.C.A.,
Sections 596, 597, as the remedy for the seaman's
(respondent's) complaint against the shipowner
(petitioner) for delayed payment of wages?

Statutes Involved

The seaman's prompt payment wage statutes
involved are as follows:

46 U.S.C.A., Section 596 (the text of
which appears in Petitioner's brief on page 2
note 2). It provides that in the case of foreign
voyages, the seaman shall be paid within 24 hours
after the cargo has been discharged or within 4
days after he is discharged, whichever occurs first;
and in all cases he shall be entitled to 1/3 of the
balance due him at the time of his discharge; and
for failure to do so, without sufficient cause, the
owner shall be liable to 2 days pay for each day of
delay which shall be recoverable "as wages in any
claim made before the court".

This statute was adopted in its
present form by the Act of March 4, 1915. Its
derivation goes back to a federal statute of July 20,

Section 13.7. ...
Section 13.7. ...

Section 13.7. ...

1. The following ...

2. The following ...

Section 13.7. ...

3. The following ...

4. The following ...

5. The following ...

1790, Chapter 29, Section 6, 1 Stat. 133 (see Historical Note to 46 U.S.C.A., Section 596).

46 U.S.C.A., Section 597

It reads as follows: "Every seaman on a vessel of the United States shall be entitled to receive on demand from the master of the vessel to which he belongs one-half part of the balance of his wages earned and remaining unpaid at the time when such demand is made at every port where such vessel, after the voyage has been commenced, shall load or deliver cargo before the voyage is ended, and all stipulations in the contract to the contrary shall be void: ~~Provided~~ Such a demand shall not be made before the expiration of, nor oftener than once in five days nor more than once in the same harbor on the same entry. Any failure on the part of the master to comply with this demand shall release the seaman from his contract and he shall be entitled to full payment of wages earned. And when the voyage is ended every such seaman shall be entitled to the remainder of the wages which shall be then due him, as provided in section 596 of this title ... "

The above statute was adopted in its present form by Act of June 5, 1920. Its derivation is likewise traceable to the Act of July 20, 1790, *supra*. (See Historical Note to 46 U.S.C.A., Section 597).

Statement Of The Case

Respondent (plaintiff in the District Court

action) is a merchant seaman and joined the American merchant vessel, SS "U.S. PECOS", at Galveston, Texas, on August 3, 1965, as ordinary seaman on 6 month articles of employment, at the wages of \$304.90 per month (3a, 9a-10a). The shipping articles, which fixed the terms and conditions of respondent's employment, made specific reference to laws of the United States affecting prompt payment of seaman's wages (40a-41a). He was a member of the National Maritime Union (9a).

The vessel sailed to various foreign ports and delivered a cargo to Saigon in South Vietnam and then returned to Saigon a second time with a cargo which had been taken on in Taiwan (10a-11a).

Before the vessel departed from Taiwan on the vessel's second trip to Saigon, the respondent asked to be discharged from the articles of employment and to be paid the balance of the wages due him, since his 6 month period of employment was about up and because he did not wish to return to Saigon (3a, 12a-13a, 35a par. 4, 37a-38a). Also, he asked for a draw of money against the funds which were due him for wages previously earned (3a, 35a par. 4, 37a-38a). Both requests were refused by the captain (3a, 35a par. 4, 37a-38a).

The vessel arrived and anchored in the river leading to and near to the port of Saigon on February 3, 1966; it is called Cap St. Jacques (38a). It lay there at anchor for 10-11 days and until February 13, 1966 when it arrived in Saigon (38a). It was apparent that the delay was caused

by the congestion from other vessels in the harbor of Saigon (20a).

At Cap St. Jacques on February 3, 1966, respondent asked to be discharged from the articles and to be paid off but the captain again refused (38a).

In Cap St. Jacques respondent asked for shore leave and for the use of a launch for that purpose, but the captain refused this request also (11a-12a). Shortly before, on respondent's previous trip to Saigon on the same ship and while the vessel lay at anchor at a different point on the same river, and was being delayed by other vessels from unloading, the crew was allowed shore leave and the owner furnished a launch for this purpose (20a). [2]

[2] The contract prevailing between respondent's union (National Maritime Union) and the petitioner provided that unlicensed crew members are normally entitled to shore leave and the use of a launch for this purpose when the vessel lay at anchorage in a port for a period of 8 hours or more (See Record, Joint Exhibit #1, p. 49). The same contract provides also that if the crew is restricted to the vessel while at anchor in a port by governmental authorities, then the crew is entitled to pay for overtime unless the company produces a copy of a government restriction preventing shore leave when the crew is paid off or if such is not available, then the captain must show the crew's representative a copy of a letter prepared by the captain and addressed to the proper governmental authority, with receipt acknowledged by such authority, in which letter the captain should state the terms of the restriction (45a, Section 2).

When the vessel arrived in the port of Saigon on February 13, 1966, the respondent again asked to be discharged from the articles and to be paid off but the captain refused (38a).

On February 17, 1966, the captain offered the respondent discharge from the articles but refused to pay him the balance of the wages due him in American dollars and instead gave him a voucher which respondent was to present to the owner when he arrived at the company's office in the United States (3a par. 7, 13a-14a, 38a). At the time, he was allowed only \$50.00 as a draw (14a, 34a).

Respondent was flown back to Galveston, Texas by plane and then had to wait a few days in Galveston before he was paid off there on February 22, 1966 (17a).

However, the owner failed to pay respondent for certain overtime work performed by him and on February 22, 1966, he requested petitioner's business representative in Galveston, Texas to pay it and respondent itemized it for him; but petitioner's agent refused and referred him to the union (17a-18a).

Respondent then went to his union representative in Galveston on February 22, 1966 and presented his claim to him but the union representative merely referred him to the union representative in Yokahama, Japan (16a, 39a).

On February 23, 1966, respondent addressed

a letter to the petitioner requesting payment and again he itemized his demand, but the petitioner failed to comply (18a, 39a).

Since respondent realized it would be difficult and impractical to confer with the union agent in Japan and to supply details and to negotiate about them over such a long distance, he took the matter to his attorney, but the petitioner still failed to pay (16a, 39a).

Respondent sued for the overtime wages which totalled about \$300.00 (2a par. 9th, 38a-39a); for reimbursement on account of expenses for luggage and taxi costs incurred in connection with the plane trip, totalling \$15.00 [3]; and for penalties in the delay on the payment of his wages, in pursuance to the federal statutes (46 U.S.C.A., Sections 596, 597) [4].

[3] Respondent's claim for the value of the difference between first class transportation to which he was admittedly entitled and tourist class which he got was withdrawn by respondent on being reimbursed by the airplane carrier (37a par. 2).

[4] Respondent offered an amended bill of complaint at the outset of the hearing to incorporate claims under both sections 596 and 597 of Title 46 U.S.C.A. to conform with the record and particularly with respondent's answer and affidavit to petitioner's motion for summary judgment, which answer asserted demand for wage draw in Taiwan and refusal by the captain but the court refused it pending its ruling on the motion for summary judgment.

Petitioner's motion for summary judgment was supported by an affidavit filed in the name of Carl Koster who was manager of Marine Personnel for the petitioner and who obtained his information "in the course of his employment" (27a). He did not purport to have any first-hand knowledge of the facts and did not contend that he was present on the vessel during the voyage or in South Vietnam or in Galveston at any time during the periods in question.

Petitioner in its motion papers asserted that it was illegal to pay off the crew in American dollars in South Vietnam (25a) but no official evidence was submitted that it was illegal [5], except for a hearsay statement appearing in Mr. Koster's affidavit that "Because of local currency restrictions, U.S. dollars were not distributed to the plaintiff at Saigon in an amount greater than that deemed necessary to meet any local expenses." (29a)

Petitioner asserted also that shore leave was not granted in Cap St. Jacques because the vessel did not get clearance (pratique) from the South Vietnam authorities until February 3, 1966 when the vessel got permission to sail to Saigon

[5] There was no evidence submitted from the U.S. State Department or from the South Vietnamese representatives, where such information should be available.

where it unloaded from February 15-February 18 (26a). But no evidence was offered pertaining to the government's restriction against shore leave as is required by the collective bargaining contract (see footnote 2, supra).

Finally, petitioner asserted that the respondent's proper remedy for delayed wage payment was through the collective bargaining agreement and that he "must" seek his relief through the grievance machinery there (29a-32). Petitioner contended in argument that the aforementioned federal statutes were not available to the respondent in this case.

In respondent's answer to the motion papers, respondent asserted in his affidavit that he was not notified that pratique was denied for shore leave in Cap St. Jacques or elsewhere (35a par. 4), and that he was not notified that it was illegal to be paid in American dollars in South Vietnam (35a, par. 4).

No testimony was presented at the hearing.

The District Court granted the owner's Motion for Summary Judgment (55a-56a) and on appeal, the Fourth Circuit Court reversed (57a-73a).

Argument

I. The Fourth Circuit Did Not Err In Its Order Reversing The Maryland District Court.

1. The federal statutes providing for

prompt payment of seaman's wages
implement long established public
policy.

The right to prompt payment of a seaman's wages derives from a sound public policy which is to encourage men to go to sea as merchant mariners. This Court spoke of "the maintenance of a Merchant Marine for the commercial service and maritime defense of the nation by inducing men to accept employment in an arduous and perilous service". Calmar S.S. Corp. v. Taylor, 303 U.S. 525, 528, 58 S.Ct. 651, 653, 82 L.Ed. 993.

The Fourth Circuit poignantly expressed itself on this matter as follows:

"Since ancient times seamen have been accorded special protection by their Governments and Courts, particularly with respect to the prompt payment of wages due them (Benedict on Admiralty, Vol. 4, sec. 621, p. 282). The right to prompt payment of seaman's wages is especially favored by the law. The official concern for seamen, this very useful band of men, is motivated more by practical than by romantic considerations. Their contribution is seapower and manifests itself in commerce and national defense.⁵ To assume their special position in the scheme of things judicial, seamen are treated as wards of the admiralty.

5. (A well documented discussion by Judge Frank concerning the historical

protection of seamen is found in Hume v. Moore-McCormack Lines, 121 F.2d 336 (2 Cir. 1941), cert. denied 314 U.S. 684). " (65a)

The Courts have given vigorous interpretations to these statutes. The Supreme Court has said that the statutes intend "to secure prompt payment of seamen's wages" and "to prevent arbitrary refusals to pay wages, and to induce prompt payment when payment is possible". [Collie v. Ferguson, 281 U.S. 52, 50 S. Ct. 189 (1930)]. The Courts strongly disapprove denial of prompt payment of seamen's wages rightfully due them [The Sonderberg, 47 F.2d 723 (4 CA), cert. den. 284 U.S. 618]. These statutes are to be liberally construed in favor of the seaman [McMahon v. U.S., 342 U.S. 596, 701]. They cover foreign seamen in American ports [S.S. Fletero v. Arias, 1953 A.M.C. 1390, 206 F.2d 267 (4 CA)]. Overtime pay is embraced within the meaning of wages [Monteiro v. Sociedad Maritima San Nicholas S.A., 280 F.2d 568, 1963 A.M.C. 1885 (2 CA); Norris "The Law of Seamen", Vol. 1, Sec. 47, pps. 76, 77]. Agreements in derogation of the seaman's wage rights will be treated as void [Lakos v. Saliaris, 1941 A.M.C. 190, 116 F.2d 440 (4 CA); Glandzis v. Callinicos, 1944 A.M.C. 188, 140 F.2d 111 (2 CA)]. The burden of proof is on the shipowner to prove that his withholding of the seaman's wages was legally justified. Butler v. U.S. War Shipping Adm., D.C. Pa. 1946, 68 F.S. 441.

2. The Collective Bargaining Agreement And Its Grievance Machinery Do Not Supercede The Federal Statutes

The Fourth Circuit succinctly said in this case:

"The collective bargaining grievance procedure available to any seaman who is a union member to collect sums allegedly due him from his employer is an additional mode of redress for such seaman and which he may pursue, at his election. However, such procedure is of fairly recent vintage, having matured in viable form during the period when labor was making substantial gains on the economic front. Section 596 antedated by long years the grievance procedure provided in the union contract. To construe the grievance procedure as a mandatory substitute for the seaman's statutory rights to prompt payment of his wages is, in our opinion, palpable error. Statutes enacted out of considerations of public policy, such as section 596 pertaining to seamen's wages, should not and cannot be nullified or circumvented by private agreement." (68a-69a)

Authorities supporting the proposition that statutes cannot be nullified or circumvented by private agreements are as follows: 17 CJS, Sec. 201, p. 1001; School Dist. etc. v. Teacher Retirement etc., 95 P. 2d 720, 163 Or. 103, 125 A.L.R. 727; Housing Authority etc. v. Lira (Texas), Civ. App. 282 S.W. 2d 746.

The petitioner placed its reliance for its opposite position on some recent cases. These cases hold that where an employee seeks to sue his employer and/or his Union on account of an alleged breach of his collective bargaining rights, emanating from a collective bargaining contract between his Union and his employer, he must first show that he has attempted to use the contract grievance procedure in the collective bargaining contract as his mode of redress.

Republic Steel Corp. v. Maddox, 376 U.S. 650, 35 S.Ct. 614. Only if the Union refuses to press the claim or if it presses it perfunctorily, then the employee may seek redress in the Courts.

Republic Steel Corp. v. Maddox, 376 U.S. 650, 35 S. Ct. 614; Vaca v. Sipes, etc., 386 U.S. 171, 87 S. Ct. 903 (1967).

The petitioner cites a few cases purporting to show that the courts are applying Maddox and Sipes to the maritime area of the law. Reference was made to Freedman v. N.M.U. and Amer. Export Isbrandtsen Lines Inc. (1965), 347 F.2d 167 (2 CA), cert. den. 383 U.S. 917; Brandt v. U.S. Lines, 246 F.S. 982 (S.D. N.Y.) (1966); and Jones v. Amer. Export Isbrandtsen Lines, Inc. (S.D. N.Y., 1968), 285 F.S. 345.

Freedman involved a charge by a seaman of improper discharge by the employer. The latter contended that the plaintiff seaman had disobeyed an order to steer the vessel properly which the plaintiff did not contradict. The U.S. Coast Guard had previously found the plaintiff guilty on account of the same incident and disciplined him. Plaintiff's union refused to arbitrate the grievance after investigating it. The lower court granted the

motion for summary judgment and was affirmed.

Brandt concerned a similar charge by a seaman of unfair discharge. After a proper investigation by his union, the latter concluded that the case lacked merit and refused to arbitrate it. The seaman appearing, per se, sued both the employer and the union. Summary judgment in favor of the defendant was granted.

Jones had to do with a claim for overtime and transportation, plus a claim for 1 month's pay on account of an alleged wrongful discharge and a claim for penalties because of delay in payment of the overtime. The District Court heard the case on its merits and decided against the seaman. There was no motion for summary judgment. Also, the Court in an apparent obiter dicta stated that the claims were barred because the seaman had not exhausted the collective bargaining contract remedies, citing Vaca v. Sipes, supra.

Neither Freedman nor Brandt involved a suit under the federal prompt-wage-payment statutes (46 U.S.C.A., Sections 596, 597). The right sued upon in these two cases, namely the right to be secure against unfair discharge by the employer, was created by the collective bargaining contract. Otherwise, it did not exist; no statute provided for it. Hence, the plaintiffs in those cases had to abide by the terms of that private agreement in order to prevail. Since the union could use its discretion whether or not to go to arbitration with the cases, provided it had acted in good faith toward the respective seaman-members, the plaintiffs therein had no case based on the motion papers, and the motion for summary

action for monetary judgment and was addressed.

Thereafter, the court issued a similar charge by a
 statement of monetary judgment. After a proper in-
 vestigation by the jury, the latter concluded that
 the case lacked merit and returned a verdict of \$10,000.
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judgment was granted.

But Arguelles is based on the aforementioned federal statutes and the well-spring of his right is not the collective bargaining agreement, but the text of the statutes and the court's interpretations of them. He does not have to look to the grievance machinery of the contract for his remedy but to the courts. Hence, it was error for the District Court to apply the Maddox and Sipes holdings, and their ukase that the aggrieved employee and union member must first exhaust the collective contract grievance procedure remedies should not apply.

As to Jones, while a federal prompt-wage-payment statute was involved, the Court did accept the case and heard it fully on its merits and then ruled. This is different from Arguelles where the District Court rejected it on a Motion for Summary Judgment without a hearing on the merits. The reference to the exhaustion of remedies doctrine was surplusage and obiter dicta and a non-sequitur to its assumption of jurisdiction and to its hearing of the case on the merits. Besides, Jones antedated the Arguelles decision in the Fourth Circuit and the points relied on in the latter case were not discussed in the Jones opinion, thus creating doubt if the Southern District Court would have so held had it had the full benefit of such a discussion. Insofar as these two cases may conflict on the exhaustion of remedies doctrine, it is felt that Arguelles represents the correct legal holding.

The phenomenon of a double remedy available to the seaman is not unique and is in keeping with the established and benign tradition of treating the

document was granted.

The first section is devoted to the administrative
 Federal relations and the well-known of the right to
 the collective bargaining agreement, but the
 law of the statute and the court's interpretation
 of it. It is not easy to find in the literature
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seaman as a ward of the admiralty. Unlike his counterpart on land, the seaman has both the right to compensation (maintenance and cure) and to damages (Jones Act remedy, 46 U.S.C.A., Section 688) on account of personal injuries suffered in the service of the ship.

The existence of the double redress is a salutary factor since it serves to implement public policy which is to insure prompt payment of seaman's wages in the nation's interest of maintaining a viable merchant marine for the trade and the defense of this country.

While it may require more action from the shipowner or ship operator because of the additional redress through collective bargaining, nevertheless the seaman had the statutory right before the Union Contract was in being. The existence of the federal remedy serves to alert both of the bargaining parties to handle wage claim matters promptly and in good faith. Should the seaman elect the Court remedy, the shipowner has the right to his day in Court and to show justification for delay, if he has any.

The petitioner in its argument urges this high Court to apply the exhaustion of remedies doctrine to the maritime law even where seamen's delayed wage payment claims are involved. In support of this objective, it urges that this doctrine represents national labor policy and therefore, because of uniformity, it should apply in this case. However, it ignores the fact that the federal wage statutes are still on the legislative books and that an act of Congress would be needed to achieve the result it seeks. 82 C.J.S.,

Section 9, p. 24, and Section 243, p. 412.

As was pointed out by the Fourth Circuit, the district courts have jurisdiction in such cases by virtue of 28 U.S.C.A., Section 1333, and by virtue of the significant language in the seaman's wage statute, 46 U.S.C.A., Section 596, which provides a remedy for the seaman "in any claim made before the court" (64a-65a). The petitioner would amend this statute so as to omit this section or to read that it is to apply only on condition that the seaman has first exhausted his collective bargaining remedies. It is not legally tenable to ask this court to exercise such statutory powers. 82 C.J.S., Section 9, p. 24, and Section 243, p. 412. This high court has recognized the important public policy behind the seaman's wage statutes and has jealously guarded their validity.

There is nothing in any of the recent labor statutes and particularly in the Labor-Management Relations Act of 1947 (29 U.S.C.A., Section 141 and seq., inclusive of 29 U.S.C.A., Section 185) and its interpretations by the Courts which specifically cancel out or modify these important federal wage statutes or alter the aforementioned public policy affecting our Merchant Marine.

Petitioner attempts to argue pragmatically that the seaman is no longer in need of the special protection of these statutes since the modern seaman is a cultured, sophisticated and well-paid member of the American community as compared with his unlearned and helpless forbears in the industry; and besides that, it is argued, he now has the protection of a strong and considerate labor union. Again, petitioner misses or ignores

the point, namely that such arguments are better suited to an effort to amend these statutes in the halls of the Congress rather than in the sanctum of this high court. However, all is not as serene as petitioner would have it seem for the modern day seaman in relation to his entitlement to prompt payment of his wages.

While collective bargaining has improved the lot of the seaman, delays and often prolonged ones occur in collective bargaining, particularly in the maritime industry. If management and the union so agree to do, there occur numerous grievance step meetings; and then arbitration comes about only if the union or management so elects. It may be added parenthetically that there is exceeding grumbling over the lack of cooperation by either or both parties in their refusal to go to arbitration in numerous cases. The delays are aggravated in the maritime industry because the personae dramatis are frequently absent at sea and the functioning of the grievance machinery often awaits their return. It is self-apparent that a delayed wage claim payment grievance could be long and difficult in its handling under the collective bargaining contract.

Then there are the less reliable and marginal employers whose delay in payment of the seaman's wages could mean no payment eventually. It is common knowledge that American passenger vessel owners have come upon hard times. There are numerous small owners or operators of freight vessels who are in delicate financial condition. Should reduction in freight traffic occur in connection with the South Vietnam war, these

the point, namely that much argument is
after added to an effort to amend these
statutes in the halls of the Congress rather
than in the chambers of this high court. How-
ever, all is not as serene as it appears would
be if it were for the modern day woman in
relation to the obligation to provide support
of her family.

While the obligation has increased
point to the woman, delays and other problems
also occur in relation to her support, particularly
in the maintenance industry. It is management and
the union are at odds; there is a great many out-
standing cases, and then there is
concern with only if the matter is not
decided. It is a great responsibility that the
is expected, particularly with the fact of progress-
ing by which we can continue in their efforts to
go to the bottom in numerous cases. The types
are presented in the new industry, but the
the present situation is a great deal more
and the handling of the situation is
very often against their interests. It is not
that a great deal of time is spent in
could be done very much in the existing
the collective bargaining system.

Then in the case of the individual worker
and employer, there is a great deal of
woman's work and it is a great deal of
It is common knowledge that the woman
very often have a great deal of time
the woman's work is a great deal of
right to work is a great deal of
union. It is a great deal of time
in connection with the woman's work.

owners and operators particularly would be in difficult economic straits. Recently one of the larger owner-operators went into bankruptcy^[6], causing resort to the courts by the seamen. Numerous mergers have occurred recently in the industry, creating confusion where to look for payment of seaman's wages. Our seamen sometimes find themselves in foreign ports with wages due and unpaid.

In such disturbing times in the maritime industry, the law should not be relaxed. The very existence of these federal statutes with their court remedy and the specter of 2 for 1 penalties discourages the less principled owners and operators from taking advantage of "this very useful band of men". The day is not yet here when the seaman can be fully protected in the prompt payment of his wages without the comfort of these federal statutes.

The national welfare should be the paramount consideration and the seaman's statutory remedy should not be scuttled in favor of contractual redress through collective bargaining. Both remedies should be available to the seaman.

However, the statutory remedy must be available without first resorting to the contractual one,

 [6] In the Matter of Seatrade Corporation,
Kulukundis Maritime Industries Inc., etc. No.
 63B216 (S.D. N.Y.)

known and constant uncertainty would be in
 this economic state. Recently one of the
 larger water-operators went into bankruptcy.
 causing a loss to the state of the amount.
 Other water-operators have occurred recently in
 the industry, creating confusion where to look
 for payment of water bills. Our watermen
 sometimes find themselves in tough spots
 with wages and profits.

In such a situation there is the possibility
 industry, the law should not be relaxed. The
 very existence of the industrial system with
 their great capacity and the operator of it for
 example, the operator of the industrial system
 and operators from the industry of the very
 small part of it. The law is not to have
 when the person can be fully protected in the
 proper government of the water without the complete
 with the industrial system.

The national water supply is the great source
 of the nation's health and the nation's industry
 and it is essential in the industrial system
 to have a complete and complete system. Both
 the national water supply is the great source.

However, the industry is not to be
 sold without the complete and complete system.

101 in the history of the nation
 National Water Supply is the great source
 of the nation's health and the nation's industry

else its objective of prompt payment is defeated. The remedy must be available at the exclusive election of the seaman, which was the intent behind the statute.

**3. There Were Genuine Issues
Of Material Fact Disentitling
The Petitioner From The
Remedy Of Summary Judgment.**

Rule 56(c) of the Federal Rules of Civil Procedure requires the movant for summary judgment to show that on the papers "there is no genuine issue as to any material fact" and that he is entitled to a judgment as a matter of law.

First, there was the conceded dispute on certain overtime items predating the arrival of the vessel in South Vietnam (39a). There was no "sufficient cause" other than hearsay proved by petitioner for denying payment in American dollars in Saigon to the respondent (see footnote 5, supra). The basis for restricting respondent to the vessel in Cap St. Jacques was not properly proved since the procedure required to show government restriction against shore leave was not followed (see footnote 2, supra).

Although it was not necessary in this case for the respondent to exhaust the grievance procedure of the union contract, as was previously pointed out, it is rather obvious that the respondent did make reasonable compliance with it. He did go to his union representative with his grievance the very day he was paid off and presented the discrepancies. But his union relegated him

to Japan for his relief while respondent was still in Galveston, Texas. It is self-apparent that this made it not only impractical but futile to process the grievance expeditiously or effectively. He could not properly explain and negotiate the details over such a long distance.

The petitioner's suggestion that the respondent should have gone to the main office of the union in New York City for a resolution of his problem is purely gratuitous; there is no basis for such procedure in the grievance procedure; and there is no evidence whether by previous practices or otherwise that it would have been productive.

This amounted to a denial of his grievance by his union without proper investigation, warranting relief from the courts. Besides, there is nothing in the collective bargaining agreement which requires a union member to contact his union representative in a foreign port when he is paid off in the states in order to comply with the grievance machinery, especially on a wage payment delay grievance.

It was error therefore for the District Court to grant the motion for summary judgment. This applied even if the doctrine of exhaustion of collective bargaining remedies were relied on, which doctrine is vigorously rejected by the respondent.

Conclusion

For the reasons presented, the judgment of the Court below should be affirmed.

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